THE SELECT COMMITTEE

ON

FOREIGN INVESTMENT:

INTERIM REPORT

ON

PUBLIC AND PRIVATE LANDS

AND

SUPPLEMENTARY REPORT

TO: Gerard Amerongen
Speaker of the Legislative Assembly of the Province of Alberta

SIR:

We, a Select Committee of the Legislative Assembly of the Province of Alberta were appointed on April 21, 1972, with instructions:

(a) to recommend ways and means which will ensure a greater participation by Albertans in the ownership and control of Alberta's industry; and

(b) to investigate and assess ways and means of providing as many opportunities and incentives as possible for Albertans and Canadians to invest in the equity ownership of companies operating within the Province of Alberta; and

(c) to assess the economic consequences of any proposed new Federal restrictions upon investment within Alberta whether by way of legislation or otherwise; and

(d) to evaluate the extent of sufficient sources of investment funds in Canada and Alberta for the future economic development of our Province and the need to create jobs for the young Albertans coming into the labour force in the decade ahead; and

(e) to examine the need for restrictions upon non-Albertan and/or non-Canadian control of certain key sectors of our economy.

Upon introduction of Bill 107 to the Assembly on June 1, 1972 the Committee was requested to examine the Bill within the Committee's terms of reference. In undertaking this examination the Committee concurrently considered certain aspects relative to foreign ownership of privately held lands in the Province of Alberta.

We have the honor to submit this Interim Report to the Fall Session this thirty-first day of October, 1972.

MEMBERS OF THE

SELECT COMMITTEE ON FOREIGN INVESTMENT

Julian G.J. Koziak, M.L.A.
Edmonton Strathcona
Chairman

Hon. Donald R. Getty, M.L.A.
Minister of Federal and Inter-governmental Affairs
Edmonton Whitemud

Thomas W. Chambers, M.L.A.
Edmonton Calder

Ronald D. Ghitter, M.L.A.
Calgary Buffalo

George Ho Lem, M.L.A.
Calgary McCall

W. Grant Notley, M.L.A.
Spirit River-Fairview

Peter Trynchy, M.L.A.
Whitecourt

Roy G. Wilson, M.L.A.
Calgary Bow

Leslie G. Young, M.L.A.
Edmonton Jasper Place

STAFF

Daryl R. Olson	Research Economist
Len Morin	Budget Officer, Treasury Department
Sylvia Holcomb	Secretary

Select Committee on Foreign Investment:

Interim Report on Public and Private Lands

Contents

I. PROGRAM OF WORK OF THE COMMITTEE

1. It was requested that this Committee investigate Bill 107 (Appendix A) within its terms of reference. Bill 107 would prohibit the sale of Public Land to individuals who are not Canadian citizens or corporations that are not 75 percent controlled by Canadians. In the event that a title subsequently becomes registered in the name of a person who is not a Canadian citizen or a corporation that is not 75 percent Canadian controlled, the Bill provides for a procedure to have the land re-vested in the Crown. It was decided by the Committee to consider private land ownership in conjunction with Bill 107.

2. The Committee advertised for briefs on Bill 107 and foreign investment in privately held lands in daily newspapers on June 30, 1972 and in weekly newspapers in Alberta during the month of July, 1972. Twelve copies of each brief were to be submitted no later than September 1, 1972 but this was subsequently extended. Of the twenty-five submissions received from organizations and individuals, six were considered as briefs and nineteen as letters (Appendix B). Those submitting briefs and letters were invited, as were the public, to attend a Public Hearing at the Legislative Building in Edmonton on September 18, 1972 (Appendix C).

3. The Committee reviewed the active files of The Department of Lands and Forests on Public Land sales in an attempt to determine the extent of Public Land sales to non-Canadians (Appendix D).

4. The Committee sought legal opinion from the Department of the Attorney General (Appendix E) on the following matters:

a) does the Provincial Government have the Constitutional Right to restrict the sale of Public Lands to Canadian citizens;

b) does the Provincial Government have the Constitutional Right to subsequently prevent the resale of such lands to non-Canadian citizens; and

c) does the Provincial Government have the right to restrict the sale of private lands by Canadian citizens preventing them from selling such lands to non-Canadian citizens; and

d) are the Caveat provisions of Bill 107 the best procedure to be used in enforcing the statutory restrictions contained in the Bill?

5. The Committee has benefitted from a review of legislation and published material from other provinces (Appendix F) and from the United States (Appendix G).

II. GENERAL OBSERVATIONS AND CONCLUSIONS

1. To determine the extent of foreign ownership in "Former Public Lands"[1] the Committee examined the Public Land sale files in the Department of Lands and Forests. It was found that consideration of all the files would have required an examination of individual folders on each transaction. The Committee was, however, able to examine 840 of the possible 1,081 active files which represent as yet unpatented lands. From a review of the 840 files it would appear that the sale of Public Lands to non-Canadians over the past 12 years is not significant, as approximately 3,681 acres are in the process of being obtained by non-Canadians through purchase agreements. This, however, overestimates the case as 160 acres were subsequently resold to a resident of Alberta. A further 2,718 acres were alienated from the Crown to a non-resident of Canada who subsequently became a resident of Alberta. The remaining 803 acres represents the amount of land alienated from the Crown and held by individuals who are still presumably residents of the United States.

These figures are downward biased by the following factors: only 840 of the possible 1,081 active files were examined; the figures do not include the disposition of Crown Lands to non-Canadians which have been paid for and therefore removed from active files; the figures do not take into account subsequent changes in citizenship; and non-Canadian citizenship was established by the address on the file and therefore based purely on inference.

1. Former Public Land in this Report refers to lands previously owned by the Crown but now privately held.

2. The Committee was able to gather only limited information on the extent of foreign ownership of privately held lands as it would have required a search of each title registered in the Land Titles Offices. In any event such data would not provide the basis for a definitive decision by the Committee regarding foreign ownership of lands. The Committee therefore sees the need for a "monitoring system" which would provide the necessary information on both private and former public lands to enable a future review of foreign ownership of lands.

3. The predominant view presented in the briefs at the Public Hearing supported the Principles of Bill 107 and generally expressed that Alberta lands should be owned and controlled by Canadians. Particular concern was expressed by a number of letters and briefs regarding the inaccessability of recreational lands and the restrictions on public use of privately held lands for hunting, fishing and other recreational pursuits. The Committee is of the view that foreign ownership is not necessarily responsible for these problems.

4. The Committee realizes that other provinces in Canada are taking various stands concerning the non-resident and non-Canadian ownership of their respective Public and private lands. With 54.9 percent of Alberta's total land area of 159,232,000 acres still controlled by the Crown, the Committee is of the view that Alberta does not have the non-resident and non-Canadian land ownership problem that certain other provinces have.

5. The legal review of the Department of the Attorney General indicated that:

a) it is within provincial jurisdiction to restrict the sale of Public Lands to Canadian citizens;

b) it would appear that it is not within provincial jurisdiction to prevent a non-Canadian from purchasing former Public Lands from a Canadian; and

c) it would appear that it is beyond provincial jurisdiction to restrict the sale of private lands to non-Canadians.

Two main factors appear to inhibit the Province from legislating on property rights pertaining to non-Canadians:

a) various treaties which the Federal Government has entered into which confer property rights to non-Canadians; and

b) the Canada Citizenship Act which gives aliens the same rights to hold property as Canadians.

III. RECOMMENDATIONS

1. Having had the benefit of research, of a Public Hearing and of written submissions, the Committee is of the view that the principle "Canadian lands should be owned and controlled by Canadians" is a good one and wherever reasonably possible should be implemented. In supporting this principle the Committee has not lost sight of the common law right of an individual to dispose of his property as he wishes. However, it is the Committee's considered opinion that Bill 107 does not arbitrarily affect this right.

Bill 107 applies only to Public Lands now owned by the Crown. In future sales of these Public Lands a purchaser would buy subject to a "cloud on the title". That cloud would restrict somewhat his right and the right of all subsequent purchasers to dispose as they please. The original purchaser and all subsequent purchasers would contractually agree that those rights of alienation would be so affected. The Committee sees no difference between these contractual arrangements and many existing arrangements where title is transferred subject to a reservation of Mines and Minerals, or subject to a restrictive covenant, or subject to an easement. The Committee therefore supports the intent of Bill 107 but recognizes the many problems which have come to the attention of the Committee and feels compelled to report these concerns:

a) The "Caveat approach" found in the Bill prevents arbitrary divesting of title without "due process of law" in that an application must be made by the Minister to the Supreme Court of Alberta to divest an ineligible owner. However, certain procedural and technical difficulties may arise (Appendix E) and therefore consideration should be given to a reservation in the original grant from the Crown in the form of a restraint on alienation with certain recourse to the Courts.

b) The Committee recommends that a non-Canadian citizen who gains an interest in property through dispositions other than sales (such as inheritance or gift) be given a reasonable time to dispose of that property. The Committee also recommends that provision be made in the Bill to allow the Minister to extend the time limit and in the event that the interest in property cannot be sold for its true value within a reasonable time, provision be made for adequate compensation where the property reverts to the Crown.

c) The Committee is concerned that there may be difficulty in obtaining reasonable mortgages by the purchaser of Public Lands subject to the Caveat provisions of Bill 107. The Committee recommends that in the event of foreclosure the mortgagee be granted the same considerations as in the immediately preceeding paragraph.

d) The Committee recommends regulations to ensure that the Minister be informed of subsequent changes in ownership of former Public Lands or shifts in the share structure of companies owning former Public Lands.

e) The Committee recommends that Bill 107 apply only to such Public Lands as are sold by agreement or otherwise after the coming into force of Bill 107.

f) The Committee anticipates that in the further growth and development of this Province new towns and cities will emerge in what today is wilderness. In all likelihood these centres of population will be situated on lands that today are known as Public Lands. Recognizing the important role that new immigrants have played in the development of this province and anticipating that this role will not be diminished in further development on new frontiers the Committee foresees undesirable social and economic effects in enforcing the provisions of Bill 107 against residents of these new centres.

g) Having regard to the constitutional problems (Appendix E) the Committee respectfully recommends:

   i) that the Minister of Federal and Intergovernmental Affairs consider the implications of various Canadian Treaties with other countries and where such Treaties provide rights to non-Canadians in conflict with the principle of Bill 107 that the Minister impress upon the Federal Government the need for amendment whenever such Treaties are renegotiated.

   ii) that the provisions of the Canada Citizenship Act which provide

rights to non-Canadians in conflict with the principle of Bill 107 be discussed at future Constitutional Conferences and that an amendment to the Canada Citizenship Act be recommended to eliminate the conflict; and further that in any changes to the B.N.A. Act consideration be given to extending Provincial rights respecting Provincially owned lands to include the right to control subsequent sales of Public Lands as provided for in Bill 107.

2. In view of the deficiency of information on privately held lands, the Committee recommends the establishment of a "monitoring system" at the earliest possible date.

IV. Supplementary Report

With the view of presenting its Final Report to the 1973 Spring Session of the Legislature, the Select Committee on Foreign Investment has advertised for submissions pertinent to the Committee's terms of reference and intends to hold Public Hearings during the week of December eleventh, 1972.

Meanwhile the Committee wishes to pursue further the constitutional and legal concerns it has raised in its Interim Report tabled in the Legislature on the thirty-first day of October, 1972.

The Committee appreciates that certain conclusions expressed in the Interim Report on the Province's right to control subsequent sales of former Crown lands may not wholly concur with the legal opinion attached to the Report as an Appendix.

Accordingly, the Committee has decided to obtain further legal opinion pertinent to the Province's constitutional rights in this area and to clarify this important matter. The legal opinion to be received by the Committee could alter certain comments made in the Interim Report and these will be expressed in the Committee's further report.

Accordingly, it is the Committee's recommendation that Bill 107 not be proceeded with at this time.

APPENDIX A

1972 Bill 107

First Session, 17th Legislature, 21 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 107

The Public Lands Amendment Act, 1972 (No. 2)

THE MINISTER OF LANDS AND FORESTS

First Reading . . . . . .

Second Reading . . . . . .

Third Reading . . . . . .

Printed by L. S. Wall, Queen's Printer, Edmonton

BILL 107

1972

THE PUBLIC LANDS AMENDMENT ACT, 1972 (No. 2)

(Assented to , 1972)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1. The Public Lands Act is hereby amended.

2. The following section is added after section 21:

21.1 (1) The Minister shall not sell public land pursuant to section 18, the regulations or an order of the Lieutenant Governor in Council, or issue a notification in favour of the purchaser for that land, if the purchaser or one of the purchasers is

(a) a person who is not a Canadian citizen, or

(b) a corporation that is not a Canadian corporation, or

(c) a person or corporation acting as a trustee for a person who is not a Canadian citizen or for a corporation that is not a Canadian corporation.

(2) In the case of a sale of public land to which subsection (1) applies, a notification issued in respect of that land shall, when it is forwarded to the Registrar, be accompanied by a caveat stating, among other things, that the land is liable to be re-vested in the Crown in right of Alberta pursuant to this section in the event that the registered owner or one of the registered owners is

(a) a person who is not a Canadian citizen, or

(b) a corporation that is not a Canadian corporation, or

(c) a person or corporation acting as a trustee for a person who is not a Canadian citizen or for a corporation that is not a Canadian corporation.

(3) A caveat under subsection (2) shall

(a) be signed by the Minister, the Deputy Minister or the Director;

(b) shall be in the form prescribed by the regulations;

(c) shall be registered under *The Land Titles Act* as though it were a caveat authorized by that Act.

Explanatory Notes

1. This Bill will amend chapter 297 of the Revised Statutes of Alberta 1970.

2. The new section 21.1 will prohibit the sale of public land to individuals who are not Canadian citizens or corporations that are not 75 per cent controlled by Canadians. In the event that title subsequently becomes registered in the name of a person who is not a Canadian citizen or a corporation that is not 75 per cent Canadian controlled, the section provides for a procedure to have the land re-vested in the Crown.

(4) Where a caveat referred to in subsection (2) is registered against the title to any land, the Supreme Court of Alberta may, upon the application of the Minister by way of originating notice of motion, make an order vesting the title to that land in the Crown in right of Alberta if it is proved that the registered owner or one of the registered owners is

(a) a person who is not a Canadian citizen, or

(b) a corporation that is not a Canadian corporation, or

(c) a person or corporation acting as a trustee for a person who is not a Canadian citizen or for a corporation that is not a Canadian corporation.

(5) Where, in the opinion of the Minister, the continuation of the registration of a caveat under this section is causing or is likely to cause hardship, the Minister may

(a) in a particular case of a registered owner who is not a Canadian citizen or is not a Canadian corporation, execute a waiver of his right to make an application to the Supreme Court under subsection (4) so long as that person or corporation remains as the registered owner or one of the registered owners of the land, or

(b) withdraw the caveat.

(6) This section does not apply where the purchaser has entered into an agreement under section 21.

(7) In this section

(a) "Canadian corporation" means

(i) in the case of a corporation with share capital, a corporation in which not less than 75 per cent of the equity shares are registered in the name of and beneficially owned by

(A) one or more Canadian citizens, or

(B) one or more corporations with share capital, if in each case not less than 75 per cent of its equity shares are registered in the name of and beneficially owned by Canadian citizens, or

(C) one or more corporations without share capital if in each case not less than 75 per cent of its members are Canadian citizens, or

(D) any combination of persons or corporations referred to in paragraphs (A), (B) and (C),

or

(ii) in the case of a corporation without share capital, a corporation in which not less than 75 per cent of the members are Canadian citizens;

(b) "equity share" means any share of any class of shares of a corporation carrying full or limited voting rights and any share of any class of shares of the corporation carrying voting rights by reason of a contingency that has occurred and is continuing.

3. Section 83, subsection (1), clause (c) is amended by striking out the words " or a British subject or declares in his application his intention to become a Canadian citizen".

4. (1) Section 101, subsection (1), clause (g) is amended by striking out the words "or British subject".

(2) Subsection (1) does not apply in the case of a homestead sale issued under The Public Lands Act before the commencement of this section.

5. This Act comes into force on the day upon which it is assented to.

3. Section 83(1)(c) presently reads:

83. (1) Every person who

(c) is a Canadian citizen or a British subject or declares in his application his intention to become a Canadian citizen,

may apply for a homestead sale unless he is ineligible to do so by reason of subsection (2).

4. Section 101(1)(g) presently reads:

101. (1) A notification may be issued for land contained in a homestead sale to a purchaser who

(g) is a Canadian citizen or British subject, and

Section 101(1) enumerates the requirements that are to be met by a purchaser under a homestead in order to obtain his title.

APPENDIX B

Appendix

Written Briefs and Letters Filed With The Committee **

*M. Gawlak

E. Kush, Q.C.

B. Kathol

J.V. Drumheller

A. Shumaker

S.B. Jones

G.J. Witt

G. Barry

J.F. Carter

W.E. Abrahamson

H. Acheson

P. Cimley

J. and E. Landeen

D. Ross

F. O'Keefe

M. Lee

B. W. Hambrook

*B. Kitchener, Vice-President Alberta Fish & Game Assoc. Chairman Zone #4 & 5

*G. Shaw and Panel
School of Economic Science and Social Philosophy

*Dr. J. Russell,Chairman of Edmonton Chapter, Committee for an Independent Canada

*M. Anderson, *Dr.W. Schultz, Dr. M. Lerohl and Dr. W. Phillips, members of the Department of Agricultural Economics and Rural Sociology, University of Alberta

*W. F. Johns, Executive Secretary, Calgary Real Estate Board Cooperative Ltd.

Dr. H. A. Buckmaster, Department of Physics, University of Calgary.

W. J. Plosz, Executive Secretary Unifarm

A Private Citizens Group from Lacombe and Blackfalds.

** The Committee has received a number of letters supporting the principle of Bill 107 subsequent to commencement of the preparation of the report.

*Gave Oral Presentations at Public Hearing

APPENDIX C

Summary of Public Hearing

A. Suggestions

- A system of monitoring land transactions to determine how much land is owned by non-Canadians, kind and value of property represented, how well it is used, whether there are significant sales to Canadians from alien owners as well as purchases by aliens, and proportion of alien purchasers who take up Alberta residence.

- Do not alienate any more Crown Lands but make them available on short term lease to anyone regardless of nationality (both residents and non-residents)(a) with renewal of the term subject to conformity to land use policy (or termination of the lease for failure to do so). (b) with provisions for periodic review of rental rates, and (c) with option to buy upon achieving Canadian citizenship status.

- In areas of private ownership, provide access to recreational areas; establish provincial land bank and heritage conservancy agencies for partial or complete conversion of private estates to public use; expropriate certain Crown Land and private land having high recreatioal potential (including shores and beds of all surficial waters and recreational areas close to urban centers).

- On the one hand, enact Bill 107 which would restrict sale and subsequent sale of Crown land to non-Canadians and on the other hand, reject the "caveat approach" prohibiting the resale of former Crown Lands and any legislation restricting the sale of privately owned land.

- Establish taxation to recover value that the community has bestowed on lands and establish higher taxation to lands held by non-resident owners.

B. Concerns

- Possibility of economy being dominated and dependant on U.S.
- Escalated buying of Alberta land with subsequent inflation in land values to point where local residents and even local governments can't compete.
- Possibility of absentee landlords.
- Canadians left with inferior tracts of land.
- Farmland converted to idle vacation territory on a seasonal basis, or in the form of investment causes deterioration in ability of local economies to function.
- Inflated land values result in higher taxes which cause economic hardship to those who have resisted pressure to sell.

- A non-resident owner, by making property improvements, increases his assessment and the local tax revenue but net economic benefit is negative since community is only populated during the summer.

- Alien owners are bound to exercise considerable social and political influence among resident population (local customs are ignored or isolated; and new cultural attitude is inserted into the fabric of community life).
- Purchase of large tracts of potential recreational properties may deny part of natural heritage to residents of the province.
- The fact that vacation land of Alberta is not as yet in the hands of Americans is only due to the fact that such land is freely available in other milder and more accessible areas of Canada
- Regulations enacted to prevent resale of Alberta lands to foreigners is complex because of the emotion that surrounds the rights of title holders.
- Exclusion of richest buyers from the market will amount to deflation of land values.
- Effects of Bill 107 by itself upon the economy, are likely to be minimal since it will restrict sales of only a small part of Alberta land, and likely the less valuable land.
- Any form of extra taxation which singles out nationals of one state, is illegal discrimination under international law.
- Legislation against individuals on basis of national origin may be contrary to the Canadian Bill of Rights (discrimination).

APPENDIX D

Summary of "Preliminary Report of Non-Resident Ownership of Crown Lands (Alberta)"

As of 1972, Alberta's total land area, minus water, is estimated to be 248,800 square miles or 97.5 percent of the province (Table 1).

Of that 248,800 square miles, 34.6 percent are privately owned, 10.5 percent are held by the Federal Government and 54.9 percent are Provincial lands (in this report called "Public Lands") (Table 1).

Of the Public Lands, 0.9 percent are in Provincial Parks, Historic Sites, including Willmore Wilderness Park and 47.0 percent are Vacant lands presently unavailable through lease or sale. 3.2 percent including Special Areas, are not available other than through grazing permits. Another 3.8 percent are lands under Public Land Dispositions, such as grazing and cultivation leases, but not leading to title (Table 1).

The disposition of Alberta's Public Lands has generally been for two major uses, that is, agricultural and non-agricultural. Table 2 provides some indication of the area involved in each and the following relevant legislation indicates that there already exists measures restricting most applications for and disposition of Public Land to persons not Canadian Citizens. However, at the moment, Public Land can still be sold to non-Canadian Citizens through Public Land Auction Sales although the proposed legislation, Bill 107, would serve to close this gap.

Research to date indicates that the total amount of Public Land alienated to non-Canadians at about 3,681 acres. That involves approximately 2.96 percent of the land alienated through Public Land Sales or only 0.0023 percent of the total Provincial area. However, this is biased by numerous factors. First, it includes only 840 of the possible 1,081 active files. Second, the foreign ownership of former Public Lands was established by the address on the file and therefore purely on inference. Third, there have been subsequent changes in citizenship. Fourth, former Public Lands that have been sold to non-Canadians and paid for, either in lump sum or over the years, are not included in the active files.[1]

Findings further indicated that residents of British Columbia held 5,901 acres, residents of Saskatchewan held 2,642 acres and residents of the North West Territories 480 acres.[2].

1. Daryl R. Olson, "Preliminary Report of Non-Resident Ownership of Crown Land (Alberta) "(Unpublished Report, September, 1972), p.5.
2. Ibid., P.5.

The Public Lands Act

Homestead Sales

Section 83, Subsection (1) (a) (b) Every person who
(a) is a veteran or has resided in the province of an aggregate total of one year within the three years prior to the date he applies for a homestead sale,

(c) is a Canadian citizen or a British subject or declares in his application his intention to become a Canadian citizen,

may apply for a homestead sale unless he is ineligible to do so by reason of subsection (2).
(Proposed amendment) Every person who
(c) is a Canadian citizen.

Section 101, Subsection (1)(g) A Notification may be issued for land contained in a homestead sale to a purchaser who
(g) is a Canadian citizen, and

Agricultural Farm Sale Regulations

Section 4, Subsection (1) Any person may apply to purchase public lands who
(b) in the Minister's opinion, is chiefly engaged in farming as an occupation;
(e) is a Canadian citizen or a British subject

The Grazing Permit Regulations

Section 3, Subsection (1) Everyone who
(b) is a Canadian citizen, or
(e) is a corporation

may apply for a grazing lease or a renewal grazing lease by submitting an application to the Director on a form prescribed by him.

Section 4, Subsection (2) No grazing lease shall be issued to a corporation unless the majority of its shares are
(a) owned by residents of the Province who are Canadian citizens, and...

The Forest Management Area Grazing License Regulations

Section 6, Subsection (1) Only a Canadian citizen who has attained the age of eighteen years is eligible to obtain a license.

(2) A corporation or a registered association is eligible to obtain a license if the majority of shares are held by residents of the Province who are Canadian citizens.

Cultivation Lease and Permit Regulations

Section 7, Every person who,

(b) is a British subject or Canadian citizen,

(c) is a veteran or has resided in the Province for an aggregate total of one year within three years prior to the date of his application

(d) in the opinion of the Minister, is operating a farm in Alberta may apply for a cultivation lease.

Farm Development, Consolidation and Enlargement Regulations

Section 7, Subsection (1) (b) (c) Pursuant to these regulations, on attaining 18 years of age

(b) any person that files a declaration of his intention to become a Canadian citizen may apply for a lease, with or without an option to purcahse public land, but the option to purcahse may not be exercised until the lessee becomes a Canadian citizen;

(e) a Canadian citizen or a British subject may apply to exchange, lease or purchase public land.

Miscellaneous Lease for Single Family Summer Cottage

Section 2. An applicant must be 18 years of age and shall be a Canadian citizen.

Section 9. No assignment of lease will be considered until development has been substantially completed and cannot be assigned to any person who is not a Canadian citizen.

TABLE 1 PRIVATE AND PUBLIC LAND [1]

	(Sq.Mi.)	(acres)	(%)
Privately owned land (patented) or under Disposition Leading to Title (Homestead Sale, Agriculture Farm Sale, etc.)	86,205	55,171,200	34.6
Federal lands (National Parks, Indian Reserves and Forest Experimental Stations)	26,127	16,721,280	10.5
Provincial Lands			
Land under Public Land Dispositions but not leading to title (Grazing leases, cultivation leases, etc.)	9,172	5,870,080	3.8
Provincial Parks, Historic Sites, including Willmore Wilderness Park	2,357	1,508,480	0.9
Special Areas (not available other than grazing)	7,920	5,068,800	3.2
Vacant Land	117,019	74,892,160	47.0
Total land area	248,800	159,232,000	100.0
Total water area	6,485	4,150,400	
Total area of province	255,285	163,382,400	

1. Technical Division, Department of Lands and Forests, Effective as of March 31,1972.

TABLE 2 PUBLIC LAND [1]

Use	Acreages
Agricultural	
Homesteads (leading to title)	1,335,724.59
Other Sales (leading to title)	553,239.28
Grazing Leases and Permits	5,439,066.23
Farm Development Leases, etc	174,549.18
	7,502,579.28
Non-Agricultural	
Residential and Recreational	13,756.91
Commercial and Industrial	242,428.73
(acreages not available for Lic. of Occ., Letters of Authority, Easements, Sand and Gravel Leases and Licenses, R.E.A., Quarrying Leases and Rights of Entry)	
	256,185.64

(acreage does not include miscellaneous Townsite Leases)

1. Technical Division, Department of Lands and Forests, Effective as of March 31, 1972.

APPENDIX E

PROVINCE OF ALBERTA

MEMORANDUM THE DEPARTMENT OF THE ATTORNEY GENERAL
Madison Building - 9919 - 105 Street

OUR FILE NO.: 29R

YOUR FILE NO.:

FROM: R. J. Poole,
Solicitor.

TO: Mr. Julian G. J. Koziak, M.L.A.
513 Legislative Building.

DATE: October 27, 1972

Re: Bill 107, The Public Lands Amendment Act, 1972 (No. 2)

We propose to deal firstly with the third question raised in your letter of October 11, 1972, namely:

> Does the Provincial Government have the right to restrict the sale of private lands by Canadian citizens preventing them from selling such lands to non-Canadian citizens?

Section 91(25) of The B.N.A. Act gives exclusive legislative authority to the Parliament of Canada in respect to matters relating to naturalization and aliens. The Canada Citizenship Act, R.S.C. 1970, C-19 by Section 24 provides:

> Real and personal property of every description may be taken, acquired, held and disposed of by an alien in the same manner in all respects as by a natural-born Canadian citizen; and a title to real and personal property of every description may be derived through, from or in succession to an alien in the same manner in all respects as though, from or in succession to a natural-born Canadian citizen.

In Union Colliery Company v Bryden (1899) A.C. 580, the Privy Council was considering the validity of a provision found in the British Columbia Coal Mines Regulation Act, 1890, that:

> No boy under the age of twelve years, and no woman or girl of any age, and no Chinaman,

. . 2

> shall be employed in or allowed to be for the purpose of employment in any mine to which the Act applies, below ground.

At page 587 from the speech of Lord Watson:

> Their Lordships see no reason to doubt that, by virtue of Section 91, Subsection 25, the Legislature of the Dominion is invested with exclusive authority in all matters which directly concern the rights, privileges, and disabilities of the class of Chinamen who are resident in the provinces of Canada. They are also of opinion that the whole pith and substance of the enactments of Section 4 of The Coal Mines Regulation Act, insofar as objected to by the appellate company, consists in establishing a statutory prohibition which affects aliens or naturalized subjects, and therefore trench upon the exclusive authority of the Parliament of Canada . . . The abstinence of the Dominion Parliament from legislating to the full limit of its powers, could not have the effect of transferring to any provincial legislature the legislative power shich had been assigned to the Dominion by Section 91 of the Act of 1867.

We are of the view that this case is authority for the proposition that any legislation by a provincial legislature along the lines suggested by the above question will be found by the courts to be beyond the jurisdiction of the legislature because of Section 91(25) of The B.N.A. Act. Although there would be an element of property and civil rights involved in such legislation (which is within the legislative competence of the provinces by Section 92(13) of The B.N.A. Act) it seems clear that in substance the object of such legislation would be to restrict the rights of aliens, which clearly takes the matter out of provincial jurisdiction. Because of the clear provisions of Section 24 of The Canada Citizenship Act, which will be paramount in the event of any conflict with provincial legislation, it does not appear that the "double aspect" doctrine will have any application.

However, it does appear that a province, in passing legislation permitted by Section 92 of The B.N.A. Act, may incidentally affect the rights of aliens. The condition is that the court must be satisfied that the legislation in pith and substance relates to a matter within Section 92, and is not merely a colorable attempt to invade federal jurisdiction. In Quong-Wing v The King (1914) 49 S.C.R. 440, the

. . 3

Supreme Court of Canada considered the validity of the following provision which appeared in a statute passed by the Saskatchewan Legislature:

> 1. No person shall employ in any capacity any white woman or girl or permit any white woman or girl to reside or lodge in or to work in or, save as a bona fide customer in a public apartment thereof only, to frequent any restaurant, laundry or other place of business or amusement owned, kept or managed by any Chinaman.
>
> 2. Any employer guilty of any contravention or violation of this Act, shall, upon summary conviction be liable to a penalty not exceeding $100 and, in default of payment, to imprisonment for a term not exceeding two months.

From the Judgment of Chief Justice Fitzpatrick:

> In terms the section purports merely to regulate places of business and resorts owned and managed by Chinese, independent of nationality, in the interest of the morals of women and girls in Saskatchewan. There are many factory Acts passed by provincial legislatures to fix the age of employment and to provide for proper accommodation for workmen and the convenience of the sexes which are intended not only to safeguard the bodily health, but also the morals of Canadian workers, and I fail to understand the difference in principle between that legislation and this. . . .
>
> Why should those legislatures not have powers to enact that women and girls should not be employed in certain industries or in certain places or by a certain class of people? This legislation may affect the civil rights of Chinamen, but it is primarily directed to the protection of children and girls.
>
> The Chinaman is not deprived of the right to employ others, but the classes from which he may select his employees are limited. In certain factories women or children under a certain age are not permitted to work at all, and, in others, they may not be employed except subject to certain

. . 4

restrictions in the interest of the employee's bodily and moral welfare. The difference between the restrictions imposed on all Canadians by such legislation and those resulting from the Act in question is one of degree, not of kind.

From the Judgment of Mr. Justice Davies:

The question on this appeal is not one as to the policy or justice of the Act in question, but solely as to the power of the provincial legislature to pass it. There is no doubt that, as enacted, it seriously affects the civil rights of the Chinamen in Saskatchewan, whether they are aliens or naturalized British subjects. If the language of Lord Watson, in delivering the judgment of the Judicial Committee of the Privy Council in Union Colliery Company of British Columbia v Bryden, (1899) A.C. 580, was to be accepted as the correct interpretation of the law defining the powers of the Dominion Parliament to legislate on the subject-matter of "naturalization and aliens" assigned to it by item 25 of section 91 of the "British North America Act, 1867," I would feel some difficulty in upholding the legislation now under review. . .

But in the later case of Cunningham v. Tomey Homma, (1903) A.C. 151, the Judicial Committee modified the views of the construction of sub-section 25 of section 91 stated in the Union Colliery decision . . .

Reading the Union Colliery case, therefore, as explained in this later case, and accepting their Lordships' interpretation of sub-section 25 of section 91, that "its language does not purport to deal with the consequences of either alienage or naturalization", and that, while it exclusively reserves these subjects to the jurisdiction of the Dominion in so far as to determine what shall constitute either alienage or naturalization, it does not touch the question of what consequences shall follow from either, I am relieved from the difficulty I would otherwise feel.

The legislation under review does not, in this view, trespass upon the exclusive power of the

. . 5

Dominion legislature. It does deal with the subject-matter of "property and civil rights" within the province, exclusively assigned to the provincial legislatures, and so dealing cannot be held ultra vires, however harshly it may bear upon Chinamen, naturalized or not, residing in the province. There is no inherent right in any class of the community to employ women and children which the legislature may not modify or take away altogether. There is nothing in the "British North America Act" which says that such legislation may not be class legislation. Once it is decided that the subject-matter of the employment of white women is within the exclusive powers of the provincial legislature and does not infringe upon any of the enumerated subject-matters assigned to the Dominion, then such provincial powers are plenary . . .

I think the pith and substance of the legislation now before us is entirely different (from that in the Bryden case). Its object and purpose is the protection of white women and girls; and the prohibition of their employment or residence, or lodging, or working, etc., in any place of business or amusement owned, kept or managed by any Chinaman is for the purpose of ensuring that protection. Such legislation does not, in my judgment, come within the class of legislation or regulation which the Judicial Committee held ultra vires of the provincial legislatures in the case of The Union Collieries v. Bryden.

The right to employ which women in any capacity or in any class of business is a civil right, and legislation upon that subject is clearly within the power of the provincial legislatures. The right to guarantee and ensure their protection from a moral standpoint is, in my opinion, within such provincial powers and, if the legislation is bona fide for that purpose, it will be upheld even though it may operate prejudicially to one class or race of people.

There is no doubt in my mind that the prohibition is a racial one and that it does not cease to operate because a Chinaman becomes naturalized.

. . 6

> It extends and was intended to extend to all Chinamen as such, naturalized or aliens. Questions which might arise in cases of mixed blood do not arise here. . .
>
> The prohibition against the employment of white women was not aimed at alien Chinamen simply or at Chinamen having any political affiliations. It was against "any Chinaman" whether owing allegiance to the rulers of the Chinese Empire, or the United States Republic, or the British Crown. In other words, it was not aimed at any class of Chinamen, or at the political status of Chinamen, but at Chinamen as men of a particular race or blood, and whether aliens or naturalized.

It will appear from the Judgment of Mr. Justice Davies that the extent of the federal power under Section 91(25) to legislate as to the consequences of citizenship, nationality or alienage is not unlimited. One learned author has concluded that the exact extent of the federal authority in this area remains a question which cannot be answered categorically. (Bora Laskin, "Canadian Constitutional Law" (Third Edition) 991.)

It will therefore appear that our opinion that the Union Colliery case will preclude provincial legislation along the lines suggested by the above question is subject to the measure of doubt created by the Tomey Homma case and the Quong-Wing case. It will appear below that this measure of doubt will increase if the restraint on alienation in the proposed legislation is based upon residence rather than nationality.

The first question posed in your letter of October 11, 1972 was as follows:

> Does the Provincial Government have the Constitutional Right to restrict the sale of its own lands to Canadian citizens?

Section 92(5) of The B.N.A. Act gives provincial legislatures exclusive power to make laws in relation to the management and sale of the public lands belonging to the province and of the timber and wood thereon.

In Brooks-Bidlake v Attorney General for British Columbia

. . 7

(1923) A.C. 450, the appellants held timber licences from the Province of British Columbia. In accordance with the relevant regulatory British Columbia statute, the licences provided that no Chinese or Japanese laborer was to be employed in working the licenses. The appellants employed both Chinese and Japanese, and sued for a declaration that they were entitled to do so on the ground that the provision in the lease conflicted with Section 91(25) of The B.N.A. Act. At pages 456 and following from the speech of the Lord Chancellor:

> Their Lordships will deal first with the contention that the stipulation in question is void as conflicting with the British North America Act, 1867. It is said that, as s.91, head 25, of the British North America Act reserves to the Dominion Parliament the exclusive right to legislate on the subject of "naturalization and aliens", the Provincial Legislature is not competent to impose regulations restricting the employment of Chinese or Japanese on Crown property held in right of the Province. Their Lordships are unable to agree with this contention. S.91 reserves to the Dominion Parliament the general right to legislate as to the rights and disabilities of aliens and naturalized persons; but the Dominion is not empowered by that section to regulate the management of the public property of the Province, or to determine whether a grantee or licensee of that property shall or shall not be permitted to employ persons of a particular race. These functions are assigned by s.92, head 5, and s.109 of the Act to the Legislature of the Province; and there is nothing in s.91 which conflicts with that view. In Union Colliery Co. v. Bryden (1899) A.C. 580 this Board held that a section in a statute of British Columbia which prohibited the employment of Chinamen in coal mines underground was beyond the powers of the Provincial Legislature; but this was on the ground that the enactment was not really applicable to coal mines only--still less to coal mines belonging to the Province--but was in truth devised to prevent Chinamen from earning their living in the Province. On the other hand, in Cunningham v. Tomey Homma (1903) A.C. 151, where another statute of British Columbia had denied the franchise to Japanese, the Board held this to be within the powers of the Provincial Legislature, which had the exclusive right to prescribe the

. . 8

> conditions under which the Provincial legislative suffrage was to be conferred. And in Attorney-General for Canada v. Attorney-General for Ontario (1898) A.C. 700 it was held that the reservation to the Dominion Parliament by s.91, head 12, of the Act of 1867 of the right to legislate as to "sea coast and inland fisheries" did not prevent a Province in which a fishery was vested from settling the conditions upon which fishing rights should be granted. To the same effect is Attorney-General for Canada v. Attorney-General for Quebec (1921) 1 A.C. 413. In their Lordships' opinion, the present case falls within the principle of the authorities last cited and not within Bryden's Case (1899) A.C. 580, and accordingly the stipulation in dispute is not void as contrary to s.91 of the British North America Act.

It should be noted that in the above case, the Privy Council was concerned with the stipulation in a specific license, although that stipulation resulted from a statutory direction. The appellants were seeking a declaration that they were entitled to a renewal of their lease. In the circumstances, all the appellants could rely upon was the previous lease which contained the prohibition against the use of Chinese or Japanese labour. The appellants had argued that the British Columbia statute in question infringed on a 1911 treaty agreement between the Dominion Government and Japan. However, consideration of the Federal treaty power was not necessary in this case. The appellant's action was based on his lease and the lease contained a prohibition against the use of both Chinese and Japanese labour. It was found that the prohibition in the lease against the use of Japanese labour was severable from the prohibition against Chinese labour. Because of this severability, if the Japanese treaty was offended by the provisions in the lease dealing with Japanese labour, the lease or license could still be considered as having effect with respect to the prohibition against Chinese labour, because there was no equivalent treaty agreement with China. Since there was nothing else in the B.N.A. Act apart from the Federal treaty power which could restrict the Province's right to deal with its own property in the circumstances, and since the appellant had also employed Chinese labour, he had violated a provision of the lease which survived the severance, with the result that he was not entitled to a renewal.

However, in Attorney-General of British Columbia v. Attorney-General of Canada (1924) A.C. 203, the question of the constitutional

validity of the British Columbia statute itself was referred to the courts by the Attorney-General. It was therefore necessary for the Privy Council to deal with the validity of the statute itself, and not a right to a renewal of any license granted thereunder. The Privy Council held that the British Columbia Act was beyond the powers of the legislature because it infringed on the Japanese Treaty Act, 1913, which had been enacted by Parliament to give force and effect to a treaty which had been entered into in 1911 by Japan and Great Britain. Although the B.C. statute prohibited the employment of both Chinese and Japanese labour, it was found that the two prohibitions in the statute, unlike the two prohibitions in the license in the earlier case, were not severable, with the result that the entire statute failed. From the speech of Viscount Haldane at page 212:

> As regards the question arising as to the application of the Treaty Act itself, they entertain no doubt that the Provincial statute violated the principle laid down in the Dominion Act of 1913. This conclusion does not in any way affect what they decided on the previous appeal as to the title to a renewal of the special licences relative to particular properties. It is concerned with the principle of the statute of 1921, and not with that of merely individual instances in which particular kinds of property are being administered.
>
> The statute has been disallowed, and if re-enacted in any form will have, in their Lordships' opinion, to be re-enacted in terms which do not strike at the principle in the Treaty that the subjects of the Emperor of Japan are to be in all that relates to their industries and callings in all respects on the same footing as the subjects or citizens of the most favoured nation. They are unable to accept the view that as the terms of the statute stand they do not infringe this principle so far as concerns subjects of the Emperor. That others who are not such subjects happen to be included can make no difference to this conclusion.
> . . .
>
> The statute has been disallowed. It may not be necessary to enact it in a fresh form, but if this is to be done it may be possible so to redraft it as to exclude from the operation of

. . 10

> its principle all subjects of the Japanese Emperor and also to avoid the risk of conflict with s.91, sub-s. 25, of the British North America Act. The question whether there has been success in the latter respect can only be answered when the terms of any fresh statute are known.

It would seem from the above that it would have been within the power of the British Columbia Legislature to enact such a prohibition against Chinese labour since there was not in existence a similar treaty with China and the Federal Treaty power under Section 132 of The B.N.A. Act did not come into play. However, the reference to Section 91(25) raises a measure of doubt.

It should be noted that the literal wording of the Federal Treaty power under Section 132 of The B.N.A. Act empowers parliament to pass laws to enable the performance of Canada's obligations "arising under treaties between the Empire and such foreign countries". The treaty power under Section 132 is therefore limited to treaties entered into on Canada's behalf by the Imperial Parliament. When enacted, Section 132 did not contemplate the Dominion having power to enter into treaties on its own behalf without the involvement of the Imperial Parliament.

It had at one time appeared that the Federal power to implement treaties entered into by the Dominion in its own right included the right to legislate in areas which would otherwise have been within provincial jurisdiction. The Privy Council held in Re Regulation and Control of Radio Communication in Canada (1932) A.C. 304 (The Radio Reference) that the modern Federal treaty power lies in the residual or "peace, order and good government" clause found in the first part of Section 91, and not in Section 132. The peace order and good government clause was therefore the source of the Federal Government's power to enact legislation giving effect to "modern" treaties, and the power would override any provincial authority which would normally govern the specific subject matter covered by the treaty.

A subsequent case in the Privy Council, Attorney-General for Canada v. Attorney-General for Ontario (1937) A.C. 327 (The Labour Conventions Case) severely limited and perhaps contradicted the principle in the Radio Reference case, discussed above. It was held that the Federal Government, in attempting to legislate to give effect to an international labour agreement, could not override provincial jurisdiction in respect to property and civil rights. The view was that if a treaty involved matters within provincial jurisdiction then such a treaty could be given legislative effect only by legislation of the provincial legislatures.

. . 11

Since appeals from Canada to the Privy Council were abolished in 1949, the Supreme Court of Canada has indicated that the Labour Conventions case may not be followed if the treaty power is called into question in the future.

> Johannesson v West St. Paul (1952) 1 S.C.R. 292;
> Francis v The Queen (1956) S.C.R. 618 at 621.

The extent of the treaty power as relates to treaties entered into by the Dominion without the involvement of the Imperial Parliament can therefore be regarded as subject to enlargement in the future.

The effect of legislation in respect to treaties entered into by the Imperial Parliament on behalf of Canada is, of course, still governed by Section 132 of the B.N.A. Act and is unaffected by the Radio Reference and the Labour Convention cases. Parliament's power in respect to such treaties remains paramount.

On the basis of the law as presently stated in the Labour Conventions case, it would appear that any modern treaties entered into by the Dominion cannot be given legislative affect by Federal legislation where the subject matter of the treaty relates to matters within provincial jurisdiction. However, the apparent willingness of the Supreme Court of Canada to depart from the Labour Conventions case must be kept in mind. To the extent that later decisions enlarge the treaty power, the provincial power to manage and sell provincially-owned property under Section 92(5) will be correspondingly restricted.

In the case of any given alien, it will be necessary to examine the provincial legislation in the light of the provisions of any relevant treaty which may be in existence. We have noted from Mr. Arnett's article in the Canadian Bar Review that there appear to be a number of treaties which could have a bearing on this question, although it may be that the preparation of an exhaustive list of such treaties will prove to be a task of some proportion.

The second question posed in your letter of October 11, 1972 was:

> Does the Provincial Government have the Constitutional Right to subsequently prevent the resale (of Provincially owned lands) to non-Canadian citizens?

It would seem that any such right will have to be based upon legislation, since it does not appear that this object could be achieved by the wording of the grant or transfer in such a manner as to restrict the transferees right to sell to persons who are not Canadian citizens.

. . 12

In spite of Hopper v Corporation of Liverpool (1944) 88 Sol. J. 213, there is doubt whether a fee simple determinable has existed since the Statute Quia Emptores, which is probably now in force in Alberta, being a law which was in force in England as of July 15, 1870. In any event the Hopper case held that the existence of a determinable fee is possible and that the rule against perpetuities applies to the possibility of reverter. Any reverter which offends that rule will be defeated. It might be noted that The Transfer and Dissent of Land Act has abolished the estate tail which is, of course, one type of determinable fee.

A right of entry for a breach of a condition subsequent attached to an estate in land is also subject to the rule against perpetuities. Further, as in the case of restraints on alienation, they will be void if they are contrary to public policy. It seems clear that any such condition or restraint is contrary to public policy if it is contrary to law. (Anger and Honsberger, "Canadian Law of Real Property" 108). Since Section 24 of The Canada Citizenship Act appears to be valid legislation and gives aliens the same rights to acquire property as Canadian citizens, it will appear that any condition subsequent or restraint aimed at preventing aliens from acquiring property will be contrary to public policy.

Further, the breach of a condition subsequent will have the result that the land reverts to the grantor, which in this case, of course, is the Crown. However, if the condition subsequent is not breached, the grantee will be able to pass on the fee simple and subsequent purchasers will therefore be at liberty to sell to anyone.

There is the further question whether a determinable fee or a fee subject to a condition subsequent is recognized by and consistent with the Torrens system of land registration. Another question is whether the Federal treaty power under Section 132 of The B.N.A. Act could void such a provision in a grant or transfer. The Brooks-Bidlake case suggests that it would.

It will thus appear that if the subsequent sale to aliens of lands formally owned by the province is to be prevented, legislation will be necessary. In answering the resulting question whether the province has the power to pass such a law, it would first be noted that if such a power exists, it will be subject to the Federal treaty power. Apart from the treaty power, the case of Smylie v The Queen (1900) 27 O.A.R. 172 (Ontario Court of Appeal) is instructive.

The Ontario equivalent to our Public Lands Act provided that any license or permit to cut timber on Crown land would be subject to the condition that all pine which might be cut should be manufactured

. . 13

into lumber in Canada. It was argued that this provision interfered with the Federal Trade and Commerce power. At page 179:

> I am unable to agree that the Act is ultra vires as infringing upon the powers reserved to Parliament by the British North America Act, Section 91(2) for the regulation of trade and commerce. The ground on which it is said to do so is that by requiring the timber to be manufactured into sawn lumber in Canada, the Act indirectly prohibits its exportation to foreign countries in any other than its manufactured state.
>
> Whether this objection would be valid if the Act professed to deal generally with timber which had become the property of private persons or corporations free from any condition on which it had been acquired from the Crown, might admit of argument, but if I am right in my view that the legislature was dealing with the public property of the province and dictating the terms on which it might be acquired, I think that is not well-founded.
>
> The Act does not in terms purport in any way to regulate trade and commerce, though trade and commerce may be incidentally affected by the business conditions which arise out of its operation, just as they may be by provincial legislation affecting property and civil rights in the province or dealing with other subjects assigned to the exclusive jurisdiction of the provincial legislature, and which, as Lord Herschell expresses it, incidentally involves some fetter on trade and commerce, but is not concerned directly therewith for the purpose of regulating it.
>
> In disposing of its own property, I conceive that the legislature, to which is assigned, by Section 92(5) of the British North America Act, exclusive jurisdiction over the management and sale of the public lands belonging to the province and of the timber and wood thereon, must necessarily have power to prescribe that the licensee shall observe the conditions and

. . 14

> regulations which may be attached to its acquisition.

We have not located any subsequent judicial decision which restricts or disapproves of the principle in the Smylie case.

In the result, it is our opinion on the basis of the above case and the Brooks-Bidlake case that the province is competent to enact legislation which will prevent the subsequent sale to aliens of lands formally owned by the province subject, of course, to the Federal treaty power under Section 132 of the B.N.A. Act.

The final question in your letter of October 11, 1972 concerns the procedure to be used in enforcing such a statutory restriction. We have noted the "caveat system" set out in Bill 107, and we would compare this sytem with the procedure provided in Sections 19 and 21 of the present Public Lands Act.

> 19. (5) A notification issued pursuant to this section shall restrict the use of the land to the purpose for which it is given.
>
> 21. (1) Where the Minister proposes to sell public land pursuant to section 18 or pursuant to an order of the Lieutenant Governor in Council, the Minister may, as a condition of the sale, require the intended purchaser to enter into an agreement
>
> (a) restricting the purposes to which the land to be sold may be used, and
> (b) requiring the purchaser or his successors in title to retransfer the land to the Crown in the event that the land is no longer used for the purposes referred to in the agreement,
>
> upon such terms and conditions as the Minister prescribes.
> (2) An agreement under this section may be registered under The Land Titles Act and is not void by reason only that the agreement or any provision of the agreement infringes the rule against perpetuities.

The notification in Form "A" to the Public Lands Act directs the Registrar of Land Titles to issue a certificate of title to the purchaser "for an estate in fee simple". Section 21 therefore creates a fee simple subject to a condition subsequent (in the nature of a

. . 15

restriction on the use of the property) and it is therefore necessary to provide that the rule against perpetuities does not apply to the right of reversion. It should be noted that the "caveat system" in Bill 107 also creates a fee simple subject to a condition subsequent, but no provision is made for the exclusion of the rule against perpetuities.

The advantage of the "caveat system" in Bill 107 is that it makes it necessary for the Crown to proceed through the courts to exercise any right of reversion, and this would presumably overcome any difficulties posed by a Bill of Rights Act requiring "due process" before there is deprivation of property.

Section 21.1 (3)(c) provides that the caveat shall be registered under the Land Titles Act as though it were a caveat authorized by that Act. Section 136 of the Land Titles Act provides in part as follows:

> 136. Any person claiming to be interested under any will, settlement or trust deed, or any instrument of transfer or transmission or under an unregistered instrument, . . . may cause to be filed on his behalf with the Registrar a caveat in Form 33 in the Schedule . . .

Section 142 of the Land Titles Act provides:

> 142. So long as any caveat remains in force the Registrar shall not register an instrument purporting to affect the land, mortgage or encumbrance in respect of which the caveat is lodged, unless the instrument is expressed to be subject to the claim of the caveator.

Section 144 of the Land Titles Act provides in part as follows:

> 144. (1) Except as otherwise provided in this section . . . every caveat lodged against any land, mortgage or encumbrance shall be deemed to have lapsed after the expiration of sixty days after notice has been either served as process is usually served, or sent by registered mail, in Form 36 in the Schedule or to the like effect, to the caveator at or to the address stated in the caveat . . . to take proceedings in court on his caveat, unless before the expiration of the period of sixty days the caveator takes proceedings

> in court by originating notice, subject to the Alberta Rules of Court, or otherwise, to substantiate the title, estate, interest or lien claimed by his caveat and a certificate of lis pendens in Form 37 of the Schedule has been filed with the Registrar.

Section 144 goes onto provide that the sixty day period may be shortened by a Judge upon ex parte application. Section 145 empowers a Judge to extend the sixty day period upon application by notice of motion. Section 146 permits the owner to commence legal proceedings requiring the caveator to show cause why his caveat should not be discharged.

While Section 21.1(3)(c) of Bill 107 may have the effect of enlarging Section 136 of the Land Titles Act so that such a caveat may be registered, it will be seen that Section 144 will provide an easy and inexpensive means of challenging the caveat by the mere filing of a "Notice to Caveator to Take Proceedings on Caveat". The Crown could therefore be put to the trouble and expense of having to commence legal proceedings to preserve a great number of such caveats.

It is conceivable that some of the features of the "caveat system" could be usefully combined with a procedure similar to that in Section 21 of the present Public Lands Act. It may be that the notification should direct the Registrar of Land Titles to issue the certificate of title subject to the restraint on alienation. The Registrar could be directed to endorse a memorandum of the restriction on alienation on the purchaser's certificate of title and all subsequent certificates of title. Reversion following a purported sale to an alien could be made enforceable only through the courts to comply with Bill of Rights legislation. A provision could be added giving any owner the right to apply to the court for the removal of the restraint on alienation from his or her title.

We would conclude with some general observations.

We have not undertaken a comparative study of similar legislation in other provincial jurisdictions since it would appear that this would merely duplicate other material which your committee has assembled. We have noted, however, that the British Columbia equivalent to our Public Lands Act, the Land Act, Chapter 17 of the 1970 Statutes of British Columbia, by Section 7 prohibits the sale of provincially-owned land to anyone other than Canadian citizens. No restriction on subsequent sales was located in that statute.

. . 17

It may be that the present reference to "registered owner" in Bill 107 is sufficient to cover dispositions other than sales, since the nature of the disposition by which title has been acquired would not be material. However, it has been suggested that the reference to registered owners will enable the Bill to be circumvented by enabling an alien to hold the beneficial interest in accordance with a secret trust agreement with the Canadian citizen or Canadian corporation who is the registered owner. Such a secret trust arrangement is, of course, prohibited by Section 21.1(2)(c) of Bill 107 and would therefore be an illegal trust. Although there would be obvious difficulties in any attempt to prove the existence of such a secret trust, the person beneficially interested in the property may encounter difficulties if it ever becomes necessary for such person to attempt to enforce the illegal trust in the courts. It would also appear that a prosecution for criminal breach of trust will not succeed where the trust in question is prohibited by provincial law.

An interesting position would present itself if an alien attempted to foreclose on a mortgage granted to the alien by the owner of land subject to the restraint on alienation. Section 109 of the Land Titles Act provides that upon the successful conclusion of a foreclosure action, the mortgagee "shall be deemed a transferee of the land and becomes the owner thereof and is entitled to receive a certificate of title for it". There would therefore be a direct conflict between Section 109 of the Land Titles Act and Section 21.1 of Bill 107. This is merely one of several conceivable situations where the possibility of a conflict between Bill 107 and the general law of the province will occur. In the specific instance of Section 109 of the Land Titles Act, it would be possible to argue that such a mortgagee must be considered as being bound by the restraint against alienation endorsed on the mortgagor's certificate of title. It could be argued that the right of such an alien mortgagee in such a situation will be restricted to obtaining a vesting order in favour of a tenderer in the foreclosure proceedings, who must be a Canadian citizen. However, there may well be much more formidable difficulties posed by situations which have not been foreseen or fully appreciated.

It has been suggested that it would be preferable to require proof of a transferee's Canadian citizenship before any subsequent title is issued. This would tend to prevent a prohibitive transfer, rather than letting it take place and then proceeding through the courts to set it aside.

A question which has been raised is whether the province would have the power to generally prohibit the disposal of land by private persons or concerns to persons or concerns who are not residents of Alberta or

. . 18

Canada.

Since residence can be changed with relative ease, and since a person can have more than one residence, it will be desirable to provide a definition of the term. Residency of corporations will, of course, also require definition.

There are doubts whether a provincial legislature can exclude the property rights of Canadian citizens who are not residents of the province, or for that matter, who are not resident in Canada. However, the right of the legislature to control ownership of land within the province was established by the Supreme Court of Canada in Walter v Attorney General for Alberta (1969) 66 W.W.R. 513, where it was held that the Alberta Communal Property Act was valid legislation under Section 92(13) of the British North America Act. It was held that this Act related to ownership of land in Alberta, and had as its purpose the control and regulation (but not the prohibition) of the acquisition of large areas of land held as communal property. At page 520 from the Judgment of Mr. Justice Martland:

> It is a function of a provincial legislature to enact those laws which govern the holding of land within the boundaries of that province. It determines the manner in which land is held. It regulates the acquisition and disposition of such land, and, if it is considered desirable in the interests of the residents in that province, it controls the extent of the land holdings of a person or group of persons. The fact that a religious group upholds tenants which lead to economic views in relation to land holding does not mean that a provincial legislature, enacting land legislation which may run counter to such views, can be said, in consequence, to be legislating in respect of religion and not in respect to property.

Particular attention should be given to the following brief observation at page 517 of the Judgment:

> There is no suggestion in the present case that the Act relates to any class of subject specifically enumerated in Section 91.

It would therefore seem that had the Dominion been able to rely on a class of subject specifically enumerated in Section 91, then

. . 19

different considerations may have applied. In any event, it appears from this case that the pith and substance of the legislation must be a matter within Section 92. If this is established, then it is possible to incidentally affect areas in Federal jurisdiction. Such legislation "affects" but is not "in relation to" matters of Federal jurisdiction.

It was noted earlier that there is uncertainty surrounding the extent to which Parliament may legislate under Section 91(25) to define the status and capacity of aliens. This question is therefore open to argument.

It was also noted from the Quong-Wing case that a province can to some extent effect the rights of aliens when enacting legislation which in pith and substance relates to a matter within Section 92.

On the basis of the present law, we are of the opinion that an argument could be made that some form of regulation of land tenure based upon residency rather than nationality would be within the competence of the Provincial Legislature. The issue in any such argument would be, of course, whether the regulatory legislation in pith and substance is "in relation to" land tenure in the province and merely "effects" the rights of aliens incidentally.

R. J. Poole,
Solicitor.

RJP/sjk

APPENDIX F

Other Provinces of Canada

A review of the stands taken by various provinces on foreign investment in Crown lands reveals a wide divergence of opinions and legislation.

"In British Columbia, where 93.5 percent of the lands of the Province are still owned by the Crown, this government developed a policy of lease-develop-purchase, except in the case of waterfront lands, to ensure that Crown lands are actually developed and used rather than being held for speculative purposes." [1]

"At the 1970 sitting of the Legislature, a new Land Act was passed which precludes the sale of Crown land to other than Canadian citizens (Refer to Section 7, subsection 3(a) below)...This statute does not preclude the leasing of Crown lands to non-Canadians, so long as they can perform under the existing land use policies, but a lessee cannot proceed to title unless he becomes a Canadian citizen...with respect to waterfront properties, the Crown lands are disposed of on a lease-hold basis only for recreational cottage use with no option to purchase." [2]

"A schedule for development is also written into the lease indenture to ensure that development of Crown land is undertaken without undue delay. Recently the government adopted a policy of requiring the posting of a performance bond in the form of cash or British Columbia Government Parity Bonds where a disposition of Crown land may have a continuing impact on the environment." [3]

"[In addition, the former British Columbia government has not seen fit to] restrict the disposition of Crown lands or the right to acquire private lands to Canadians resident in the Province." [4] It has been suggested that the problem may be acute in the Gulf Islands of the Georgia Strait and the Caribou Country where it is estimated that 75 percent of the ranch land is American owned. However there has been no conclusive research to substantiate this claim.

Section 7, Subsection 3. No person
(a) who is not a Canadian citizen within the meaning of the Canadian Citizenship Act (Canada); and
(b) whose application for a disposition of Crown land has not been allowed prior to the coming into force of this Act
shall be entitled to a Crown grant.

1. Hon. R. Williston, former Minister of Lands and Forests, Personal letter, Victoria, British Columbia, August 17, 1972.
2. Ibid.
3. Ibid.
4. Ibid.

"Saskatchewan has no real problem with the control of ownership of recreational land...most of this land is Crown land anyway. But the farm land is mainly privately owned, and there is a problem there of non-residents accumulating large tracts of land and absentee landlordship develops." [1] Saskatchewan has proposed the enactment of two Bills in 1972. Bill 115 entitled, "An Act respecting the Foreign Ownership of Agricultural Lands in Saskatchewan," was introduced as a white paper on the ownership of land by non-resident persons. The term "person" was used in the legal sense to include individuals, partnerships and corporations (Refer to Section 2 below).

In cases where land has been inherited, the owner will have one year to sell the property to a resident (Refer to Section 5 below). Where property cannot be sold within that time limit provisions are made in the Bill to allow the government to extend the time limit or to perform the sale.

Section 2. In this Act:
(d) "non-resident person" means:
(i) an individual who is not domiciled in Saskatchewan;
(ii) a partnership in which fifty percent or more of the partners are individuals described in subclause (i) or bodies corporate described in subclause (iii) or a combination of such individuals and bodies corporate;
(iii) a body corporate the head office of which is not situated in Saskatchewan and the majority of the shares, or a majority of the voting shares, of which are owned by individuals not domiciled in Saskatchewan or by bodies corporate the head offices of which are not situated in Saskatchewan; or
(iv) any combination of the individuals, partnerships or bodies corporate mentioned in subclauses (i),(ii) and (iii).

Section 5, This Act does not apply;
(c) to any acquisition, disposition or vesting of any land or interest therein, mentioned in this Act, where the non-resident person who is the legal or beneficial owner of the land or interest therein disposes of the land or interest therein to a person who is not a non-resident person within one year after the non-resident person became such legal or beneficial owner.

1 Honorable Allen Blakeney, Premier of Saskatchewan,Premiers Talk Land, Edmonton Journal, August 4, 1972.

"Contrary to some reports, the Government fully intended that Canadian people in other Provinces will continue to be able to acquire and own agricultural land in Saskatchewan." [1] Therefore, there was included a special provision for regulations to permit classifying non-resident persons and exempting any class of non-resident persons from the provisions of the Act (Refer to Section 14 below). The very purpose of authorizing such regulations was that Canadian citizens could be exempted from the Act.

The Bill, which in its proposed state would be retroactive to April 1, 1972, has not as yet been passed pending the outcome of the Special Committee on Ownership of Agricultural Lands. Referring to a portion of the legislation restricting non-residents and aliens from owning Saskatchewan land, one brief stated that any legislation that singles out aliens must be dealt with by the Federal Government. It also questioned whether one province could deal with the rights of residents living in other provinces. "This could be a very difficult argument...It presents a constitutional hurdle..." [2]

The extent of foreign investment is not known on a provincial basis. "The claim that the problem lies with southern prairie ranch land is not borne out by a report in which it is revealed that Americans owned about 1.76 percent of Saskatchewan agricultural land south of Township 10 (13 million acre area) in 1961 and about 2.34 percent in 1970. About three quarters of the land purchases were found to be one section or less and about three quarters were farmed by the owners. The most important impact of the Americans on the land market in the area has been the benefits provided for retiring farmers and an upward pressure on land prices causing difficulties for beginning farmers." [3]

Section 14, Subsection (1) and (2)

1. The Lieutenant Governor in Council may make regulations
   (a) defining any word or expression used in this Act and not herein defined.
   (b) designating by number of acres, by value or otherwise the amount of land in Saskatchewan of which a non-resident person may be the legal or beneficial owner;
   (c) classifying non-resident persons;
   (d) exempting any non-resident persons or class of non-resident persons from this Act or any of the provisions of this Act.

1. John R. Messer, Minister of Agriculture, Letter, Saskatoon, Saskatchewan May 16, 1972.
2. Douglas Schmeiser, Professor of the College of Law, University of Saskatchewan, quoted in "Control of Land Ownership is Federal Matter, Professor Says,"The Globe and Mail, August, 1972.
3. Jacob A. Brown, A Study of Purchases and Ownership of Saskatchewan Farm Lands By Citizens and Companies of the United States of America to December 31,1970, Research Report RR 72-11 (Saskatoon,Saskatchewan: Department of Agricultural Economics, June, 1972). p.3.

Bill 110, entitled, "An Act to facilitate the Acquisition and Disposition of Farm Land in Saskatchewan," and proposed in conjunction with Bill 115 would set up a master fund for acquisition of land from retiring farmers unable to sell their farm, or from farmers desiring to get out of the business. The properties would then be available for lease-back or rent at a reasonable cost. Bill 110 is mentioned in this review of foreign ownership since it would provide the mechanism for acquiring lands that could not be sold within the time limit provisions.

For Manitoba the same claim that the problem lies with southern prairie ranch land, but to a lesser extent than in Saskatchewan, cannot be conclusively substantiated as to extent or location. The following statement, "We have some Americans but relatively few... compared to the other provinces we've got nothing", summarizes the state of affairs.[1]

"Crown land has not been sold since 1930 but the government continues to lease it and Americans are as eligible as anyone else, although the current estimates claim only one to three percent of the leased recreational land is held by non-Canadians." [2]

To date, Ontario, has published three reports of studies on foreign investment generally. The first report provided a forum where there could be open discussion of the complicated and contentious issues involved. [3]

The second report mentioned that one sensitive area of the foreign ownership issue is non-resident ownership of land. [4] With respect to provincially-owned land the province is in a position to prevent the sales of its land to foreigners by virtue of the recently announced policy of the Department of Lands and Forests.

A subsequent study stated that the Committee does not see the availability of adequate land for recreation as sufficiently important and urgent to justify immediate attention. [5] However, the Committee does recommend an immediate study of the need for recreational land and its availability to Canadians. That is, the effect of the demand by foreign residents on the price of land and the desirability of restrictions on the sale of privately owned land as well as Crown land.

1. Bob Winstone, Chief of Land Operations, Department of Resources, Manitoba, quoted in Ron Base, "How Americans Bought the West- Will this land be their land?" Edmonton Journal, August 9, 1972.
2. Ibid.
3. William G. Davis, Prime Minister, W. Davey McKeough, Treasurer of Ontario and Minister of Economics, Allan Grossman,Minister of Trade and Development, Proceedings of the Ontario Conference on Economic and Cultural Nationalism June 23-25,1971 (Toronto: Queen's Printer, 1971).
4. Departments of Treasury and Economics, Trade and Development, and Financial and Commercial Affairs, Report of the Interdepartmental Task Force on Foreign Investment (Toronto: Queen's Printer, 1971).
5. Russell D. Rowe, M.P.P. and Chairman, Preliminary Report of the Select Committee on Economic and Cultural Nationalism (Toronto: Queen's Printer 1972), p.11

There have been claims that would appear to attach importance and urgency to the land issue. For example, it has been estimated that throughout the Province American land ownership averages about 30 percent and as high as 80 percent in some areas such as around Lake Erie and Sault Ste. Marie. Across the Province last year it was estimated that 9,000 of the present 315,000 cottage properties were American owned and north of Sault Ste. Marie for 1,000 miles, 1/2 of the cottage sites are owned by U.S. citizens but there is no conclusive evidence of this.[1]

In Quebec, the predominate concern of the government is that much of the prime agricultural land of the province, located in the Montreal plain, could be lost through indiscriminate growth of the city and this could imply either resident or non-resident ownership. With regard to foreign investment in land, they have recently announced their decision to establish a more restrictive non-resident policy.[2]

There have been no studies initiated to determine the actual extent of American ownership and lease of Crown land although it is claimed, "In Quebec they own many of the province's 1,600 private hunting and fishing lodges, which under an old arrangement are leased on Crown Lands. They have cut the public off from access to 80 percent of the province's best recreational land."[3]

As for Nova Scotia, there is very little opportunity for control over land distribution. "The provincial government of Nova Scotia owns just 22.6 percent of the land...[4]" It is confirmed that in the Province of Nova Scotia, it is not the policy of the government to sell Crown Land to either non-residents of the Province or to residents of the Province."[5] On January 1, 1970 they enacted "An Act to Provide for the Disclosure of Land Holdings by Non-residents and Certain Corporations."(Refer over for Section 4 and 5). The intent of the Act is to have non-residents and certain corporations register their holdings. Non-residents and certain corporations holding land prior to the Act are allowed one year, after the Act comes into force, to comply or face conviction for failure to do so. One difficulty with the new act is indicated by the statement,"It

1. Ron Base, "How Americans Bought the West-Will this land be their land?" Edmonton Journal, August 9, 1972.
2. Gaétan Lussier, Deputy Minister of Agriculture, Letter, Quebec City, Quebec, July 12, 1972.
3. Ron Base, "Our Land Dilemma-Buy Land now, they ain't making any more-Will Rogers," Edmonton Journal, August 5, 1972.
4. Ron Base, "Canada: The Promiscuous Fat Girl-Land ownership in the East", Edmonton Journal, August 8, 1972.
5. Mr. E. De Lory, Minister of Lands and Forests, Personal Letter, Halifax, Nova Scotia, September 12, 1972.

is apparent that new purchases are not being registered (about 42 percent) which is thus a weak point of the Land Holdings Disclosure Act." [1]

Section 4, Subsection (1)
Every non-resident who acquires a land holding in the Province shall immediately upon completion or operation of the document of conveyance deliver to the Registrar a disclosure statement.

Section 4, Subsection (2)
Every non-resident who owns a land holding in the Province on the day on which this Act comes into force shall, within one year of the day on which this Act comes into force, deliver to the Registrar a disclosure statement.

Section 4, Subsection (3)
Every non-resident who wilfully fails to comply with subsection (1) or with subsection (2) shall be guilty of an offence and liable on summary conviction to a penalty not exceeding one thousand dollars.

Section 5, Subsection (1)
Every corporation that acquires a land holding in the Province shall immediately upon completion or operation of the document of conveyance have delivered to the Registrar a disclosure statement.

Section 5, Subsection (2)
Every corporation that owns a land holding in the Province on the day on which this Act comes into force shall, within one year of the day on which this Act comes into force, have delivered to the Registrar a disclosure statement.

Section 5, Subsection (3)
Every corporation that fails to comply with subsection (1) or with subsection (2) shall be guilty of an offence and liable on summary conviction to a penalty not exceeding one thousand dollars.

Section 5, Subsection (4) Clauses (a), (b) and (c).
This Section shall not apply to a corporation
(a) that is incorporated by or under any Act of the Legislature of Nova Scotia;
(b) that holds a certificate of registration issued under the Corporations Registration Act; or
(c) that actually carries on its business and has erected an office, plant, factory or other structure on the land holding.

1. J.A. Archibald, Registrar of Land Holdings, Letter, Halifax, Nova Scotia, July 18, 1972.

The following table indicates some of the findings in two Nova Scotia Counties.

TABLE 3 FINDINGS OF LAND HOLDINGS DISCLOSURE ACT

	County A	County B
No. of owners	581	907
Nationality of lot owner		
Canadian (%)	36	20
American (%)	62	79
Other (%)	2	1
Ave. holding oer owner (acres)	28.8	106.95
Acres held by non-residents	16,733	97,000
% of County held by non-residents	2	10
% of freehold held by non-residents	3	14

Prince Edward Island has still less Crown land than Nova Scotia. Only 2.4 percent of Prince Edward Island is Crown Land.[1] As an interim measure, the Real Property Act was amended to enable certain government control over non-resident land sales pending recommendations of their Royal Commission on Land Ownership and Land Use (Refer to Section 3 below).

"The tax laws unlike those of Nova Scotia are now designed so that the non-resident is assessed more than the resident, unless of course that resident sells his land to someone outside the province in which case he could be made liable for the difference."[2]

Section 3, Subsection (1)
Persons who are not Canadian citizens may take, acquire, hold, convey, transmit, or otherwise dispose of, real property in the Province of Prince Edward Island subject to the provisions of subsection two (2) here next following.

Section 3, Subsection (2)
Unless he receives permission so to do from the Lieutenant-Governor-in-Council, no person who is not a resident of the Province of Prince Edward Island shall take, acquire, hold or in any other manner receive, either himself, or through a trustee, corporation, or any such the like, title to any real property in the Province of Prince Edward Island the aggregate total of which exceeds ten (10) acres, not to any real property in the Province of Prince Edward Island the aggregate total of which has a shore frontage in excess of five (5) chains.

1. Ron Base, "Canada: "The Promiscuous Fat Girl-Land Ownership in the East," Edmonton Journal, August 8, 1972.
2. Ibid.

"Along the 408 miles of coastline, only 150 miles of which is actually considered recreational land, residents have bought about 45½ miles." [1] As a result, it can be reasonably argued that already as much as one third of our prime recreational shore frontage has been acquired by non-resident owners."[2]

A 1971 study determined that, "As of mid December 1970 approximately 72,000 acres or 5.13 percent of the province was owned by non-residents." [3] "About 42.9 percent of the non-resident owned land is owned by Americans or about 2.2 percent of the province." [4]

The percent of New Brunswick's lands still retained under the Crown is unknown to us at the moment.

"To date, no restriction has been placed on sales to non-residents. Sales of ungranted Crown lands are by public auction and go to the highest bidder. Subsequently reacquired lands are disposed of in the same manner as ungranted lands. [5] "It is not our policy to dispose of them, except in rare cases, such as lands of small extent and entirely surrounded by granted lands, upon application of a claiment to a lot by possessory title and upon satisfactory proof of occupation, and for municipal or church purposes." [6]

The statement, "It is obvious that the sale of Crown Land to non-Canadians is not a problem in this Province," [7] can be readily substantiated.

"In the last five years this Department has sold 77 parcels of Crown Land by tender or auction which totalled 3,435 acres. Of these, 3 parcels totalling 47 acres were sold to United States citizens. A further 3 parcels, totalling 141 acres were sold to Ontario residents. The remainder were sold to residents of New Brunswick. The sales to U.S. citizens mentioned above took place in 1967 and 1968-none have occurred in the past three years." [8]

"There is however an increasing number of private land sales to United States citizens taking place in the Province."[9] This is indicated by the statement, "In New Brunswick, there was an increase of 20 percent in non-resident purchases of land last year compared to the year before."[10]

1. Ron Base, "Canada: "The Promiscuous Fat Girl-Land Ownership in the East," Edmonton Journal, August 8, 1972.
2. Honourable Alex Campbell, Premier of Prince Edward Island, quoted in Ron Base, "Canada: The Promiscuous Fat Girl-Land Ownership in the East", Edmonton Journal, August 8, 1972.
3. Resource Use Planning Unit, Extent and Implications of Non-Resident Ownership on Prince Edward Island, (Prince Edward Island:February,1971)p.4.
4. Ibid., p.6.
5. R.L. Bishop, Deputy-Minister, Department of Natural Resources, Personal Letter, Fredericton, New Brunswick, October 19, 1972.
6. Ibid.
7. Ibid.
8. Ibid.
9. Ibid.
10. James Ferrabee, "Premiers Talk Land", Edmonton Journal, August 4, 1972.

Newfoundland, lastly, with more than 95 percent[1] of the province as Crown Lands, claims not to have a problem but has no research to confirm or refute that claim.

1. Ron Base, Canada: The Promiscuous Fat Girl-Land ownership in the East", Edmonton Journal, August 8, 1972.

APPENDIX G

Appendix B

Legislation in the United States

Excerpt from the section - "Conveyance to and from Aliens" [1]

In more than one-half of the states aliens may acquire, hold and dispose of real property with the same freedom as citizens.

1. Alabama
2. Arizona - aliens eligible to citizenship; corporations having alien stockholders a majority of whom are eligible to citizenship, otherwise right of ownership is limited to extent prescribed by treaties with countries of which stockholders are citizens.
3. Arkansas
4. Colorado
5. Connecticut - so long as held for mining purposes.
6. Delaware
7. Florida
8. Idaho
9. Kansas - as to aliens eligible to citizenship; others governed by treaties with countries of which they are citizens.
10. Mexico
11. Massachusetts
12. Michigan
13. Montana - as to property held for mining purposes.
14. Missouri
15. Nevada
16. New York - permitting foreign governments to acquire, hold and dispose of real property for purposes of maintaining offices and places of residence for its ambassadors. consular offices and representatives at the United Nations.
17. North Carolina
18. North Dakota and South Dakota
19. Ohio
20. Rhode Island
21. Tennessee
22. Texas
23. Utah
24. Vermont
25. Washington
26. West Virginia

In addition, several states may now be added to this list because their legislation may be invalid (Refer to text *)

In a few other states the same freedom exists, but the amount of land which an alien may hold is limited in acreage.

1. Indiana
2. Minnesota
3. Pennsylvania
4. South Caroline
5. Wisconsin

1. Paul E. Basye, Clearing Land Titles, 2nd Edition (West Publishing Co., St. Paul, Minnesota, 1970) p. 598 - 604

Occasionally states grant complete freedom to all but enemy aliens in the acquisition of land.

1. Georgia
2. Maryland
3. New Jersey
4. Virginia

Some states retain the common law restrictions as to non-resident aliens.

1. Connecticut - it was held that non-resident aliens were not entitled to take land either by purchase or devise and that land devised to them would go to the testator's heirs or other persons designated in the will and not to the alien subject to escheat by the State.
2. Mississippi
3. New Hampshire
4. Oklahoma
5. Wyoming

Two more states limit the amount of land which a non-resident alien may acquire.

1. Iowa
2. Wisconsin

*Finally, another group of states purport to permit all aliens except those ineligible to naturalization to acquire real property substantially to the same extent as citizens.

1. Arizona
2. California - declared unconstitutional in Sei Fujii v. State of California as violating the due process and equal protection clauses of the Fourteenth Amendment.
3. District of Columbia - no alien allowed to acquire land unless he has declared his intention to become a citizen.
4. Indiana - resident aliens who have declared their intention to become citizens of United States may acquire and hold real property in same manner as citizens; other aliens may take land by devise and descent only but must convey the same within 5 years after acquisition, unless final settlement of estate of decedent is delayed; but any alien may acquire and transfer valid title to real estate to enforce his lien thereon, but such transfer must occur within 5 years.
5. Louisiana
6. Montana - permitting persons who have declared their intentions to become citizens to acquire State lands.
7. New Mexico
8. Oregon - resident aliens may acquire property; aliens who have declared their intention to become citizens may locate mining claims.

9. Wyoming - non-resident alien ineligible to citizenship may not acquire real property unless his country allows citizens of the U. S. reciprocal rights.

*Although recent decisions have indicated that legislation based upon a classification which distinguishes between aliens on this basis in unconstitutional under the due process and equal protection clauses of the Fourteenth Amendment. The remaining states retain with only slight modifications the common law restrictions respecting the acquisition of land by aliens.

1. District of Columbia - ownership of land by corporations or associations of which over fifty percent of the stock is owned by non-citizens is prohibited.

2. Illinois - holding time limited to 6 years.

3. Kentucky - holding time limited to 8 years after which time it is subject to escheat.

4. Nebraska - with some exceptions aliens and foreign corporations may not own land in Nebraska except in foreclosure of valid security in which case they must dispose of same within 10 years.

Under many of these statutory systems aliens, or some particular groups of aliens, are in terms prohibited from acquiring any land or acquiring more than a certain amount of land. Thus some legislation prohibits nonresident aliens from taking property by succession or devise unless there is a reciprocal right by citizens of the United States to take property in a foreign country upon the same terms and conditions as residents and citizens of the country of which such alien is a resident.

1. California
2. Connecticut
3. Montana
4. Wyoming

This does not mean that citizens of this country shall be able to take and enjoy it without burden or remove it or its proceeds out of the foreign country into this country, but only that they shall be able to take and enjoy it in the same way that a citizen of the foreign country could do-which may be only under severe restrictions. Still other legislation has gone further and, in addition to the above, has imposed requirements that United States citizens be able to receive funds here from estates in the foreign country, and that foreign heirs be able to receive the proceeds of an estate here without confiscation by the foreign country.

1. Oregon

A literal application of some existing statutes in the U.S. would suggest that a conveyance to an alien in violation of their provisions is not effective to transfer any title whatever to the alien or that the land

immediately or automatically escheats.

1. Arizona - property acquired in violation of the Code escheats to the State.
2. Connecticut - land acquired by nonresident alien and unused for 10 years is forfeited to purchaser from whom last acquired or his heirs.
3. Nebraska - land declared to escheat upon failure of alien to sell land within 10 years.
4. Wisconsin - lands acquired in violation of the statute shall be forfeited to the State.
5. Wyoming - transfer to non-resident alien ineligible to citizenship absolutely void unless his country allows citizens of U.S. reciprocal rights.

In passing upon the validity of a title it becomes necessary to note the local restrictions upon the ownership of land by aliens and what effect such ownership may have upon its marketability. [The concern here is] with the effect upon marketability of present or past ownership of land by an alien in those states in which such ownership is deemed unlawful. [It has been] felt that the policy of legislation designed to discourage the acquisition of land by aliens and to perpetuate the corresponding right of the state in subjecting it to forfeiture is paramount to the rights of its own citizens who may subsequently acquire land from aliens. Consequently, a few decisions are to be found expressly holding or saying that a conveyance of land from an alien to a citizen does not restore it to its previous state of marketability. The great bulk of authority, however, restores to the land, upon its reconveyance to a citizen, the same marketability which it possessed prior to its transfer to the alien. In order to cure any defect in such titles or to remove any possible doubt concerning them, a number of statutes, curative in purpose, have also been adopted to make it clear that the previous ownership of land by an alien will not affect its present marketability so long as the state did not institute proceedings to take advantage of the restrictions on alien ownership.

1. Arkansas
2. Delaware
3. Illinois
4. Indiana
5. Kansas - when land has been inherited by aliens incapable of inheriting and who have subsequently conveyed same to a citizen of United States and the State has made no claim of forfeiture during the preceding 25 years.
6. Kentucky
7. Massachusetts
8. Michigan
9. Minnesota
10. Nebraska
11. New Hampshire
12. New Jersey - conveyances to and from aliens from April 1, 1917 to April 8, 1940.

13. New York - conveyances to foreign governments or to their ambassadors, consuls or ministers for purposes of maintaining offices and places of residence for such officers or representatives at the United Nations.
14. Oklahoma
15. Oregon
16. Pennsylvania
17. South Carolina - titles of aliens or citizens derived from aliens prior to December 19, 1807.
18. Washington - conveyances to and from aliens prior to adoption of act.

Occasional title standards provide that previous ownership of land by an alien will not affect its present marketability but also contain a caveat that if title is now held by the alien, the examiner should pass the title with the notation that the transfer comtemplated should be made prior to institution of forfeiture proceedings by the state.